

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**HYPERION MEDICAL P.C. ,  
Plaintiff**

**20-CV-5081**

**against**

**ORDER FOR A**

**UNITED HEALTHCARE INSURANCE**

**JOINT STATUS REPORT**

**COMPANY OF NEW YORK,**

**Defendant**

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**ANDREW L. CARTER, JR., U.S. DISTRICT JUDGE**

The Court has a few questions regarding the fully briefed motion to remand.

In the removal petition, Defendants state that they filed the petition within 30 days of learning that the case was removable, without stating precisely when or how they determined that the case was removable as arising under ERISA. The declaration of Mabel Fairley, attached as Exhibit B to the petition, provides no further elucidation.

To the affirmation of David Etkind, plaintiffs attached several emails. As demonstrated in the emails, in December 2019, plaintiffs provided Rita Concepcion--who works in the same department as Mabel Fairley--written information regarding some of the insurance claims in this matter, such as subscribers' names, dates of the claims, employer group numbers, and names for claimants' employers, including the names of large private companies.

Would receiving that information--especially the names of the large private employers--enable the defendants to recognize that ERISA was implicated in this case without any further investigation?

On February 10, 2020, Ms. Concepcion communicated to the plaintiffs that she had already conducted some investigation by actually reviewing the defendants' own files related to the underlying insurance claims. Would this review have put the defendants on notice that ERISA was implicated?

The parties should confer and file a joint status report by November 24 indicating how they would like to proceed.

**SO ORDERED.**

**Dated: November 12, 2020**  
**New York, New York**

**/s/ Andrew L. Carter, Jr.**  
**ANDREW L. CARTER, JR.**  
**United States District Judge**